

Introduced by Senator Speier

February 15, 2005

An act to ~~add Section 17550.195 to~~ amend Sections 17550.1, 17550.13, 17550.14, 17550.17, 17550.21, 17550.37, and 17550.38 of, and to add Sections 17550.195 and 17550.26 to, the Business and Professions Code, relating to sellers of travel.

LEGISLATIVE COUNSEL'S DIGEST

SB 263, as amended, Speier. Sellers of travel: ~~penalties: felony offenses:~~ regulation.

(1) Existing law regulates sellers of travel, as defined, and requires their registration with the Attorney General. Under existing law, a violation of those provisions is a crime, and certain violations are punishable as a felony offense.

This bill would *revise the definition of seller of travel to include sellers of land or water vessel transportation, as specified. The bill would also revise regulatory requirements pertaining to disclosure and refund obligations of a seller of travel. The bill would allow a seller of travel, in lieu of a registration renewal, to file an attestation that no change has occurred to the information provided in its registration. Because the attestation is made under penalty of perjury, the bill would impose a state-mandated local program by creating a criminally punishable offense. The bill would also prohibit a seller of travel from selling future transportation or other travel services, as specified, at a discounted price or on a preferential basis. Because the violation of this prohibition would be a crime under the seller of travel regulatory provisions, the bill would impose a state-mandated local program. The bill would require the Attorney General to suspend the*

registration of a person convicted of a felony violation of the provisions regulating sellers of travel and would also prohibit the person from registering as a seller of travel and from participating in the Travel Consumer Restitution Fund for 7 years.

(2) Existing law provides for the Travel Consumer Restitution Corporation that is required to provide restitution for a claim filed by a person aggrieved, defined as a person meeting certain conditions who has sustained a loss because a seller of travel failed to refund payments for travel services that were not provided to the person. Under existing law, this restitution is secondary to any other compensation or reimbursement to which the person aggrieved is entitled.

This bill would specify that the restitution provided by the Travel Consumer Restitution Corporation is secondary only to specified sources of compensation or relief to which the person aggrieved may be entitled.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17550.1 of the Business and Professions
- 2 Code is amended to read:
- 3 17550.1. (a) "Seller of travel" means a person who sells,
- 4 provides, furnishes, contracts for, arranges, or advertises that he
- 5 or she can or may arrange, or has arranged, wholesale or retail ~~air~~
- 6 , either of the following:
- 7 (1) Air or sea transportation either separately or in conjunction
- 8 with other travel services. ~~Seller~~
- 9 (2) Land or water vessel transportation, other than sea
- 10 carriage, either separately or in conjunction with other travel
- 11 services if the total charge to the passenger exceeds three
- 12 hundred dollars (\$300).
- 13 (b) Seller of travel does not include any of the following: ~~(a) an~~

(1) *An air carrier, ~~(b) an~~.*

(2) *An ocean carrier, ~~(c) a~~.*

(3) *A hotel, motel, or similar lodging establishment where in the course of selling, providing, furnishing, contracting for, or arranging transient lodging accommodations and related services for its registered guests, it ~~(1)~~ also arranges for transportation; and ~~(2)~~ does not directly or indirectly receive any money or other valuable consideration for arranging or providing that transportation, or ~~(d) any~~.*

(4) *A person or organization certified under Part 5 (commencing with Section 12140) of Division 2 of the Insurance Code, except such a person or organization shall comply with the registration and fee provisions of Sections 17550.20 and 17550.21 for each location at which air or sea transportation is sold either separately or in conjunction with other travel services.*

(5) *A motor or rail carrier or water vessel operator holding the required permit, license, or other authority to operate from a state, federal, or other governmental entity.*

(c) *Notwithstanding any other provision of law, a reference in this article or Article 2.7 (commencing with Section 17550.35) to air or sea transportation or to an air or sea carrier, includes land or water vessel transportation, as described in subdivision (a), and a motor carrier or water vessel operator.*

SEC. 2. *Section 17550.13 of the Business and Professions Code is amended to read:*

17550.13. (a) (1) A seller of travel shall not receive any money or other valuable consideration in payment for air or sea transportation or other travel services offered by the seller of travel unless at the time of or prior to the receipt of payment, the seller of travel first furnishes to the person making that payment written materials conspicuously setting forth the following information:

~~(1)~~

(A) The name and business address and telephone number of the seller of travel.

~~(2)~~

(B) The total amount to be paid by or on behalf of the passenger, amount paid to date, the date of any future payment, the purpose of the payment made, and an itemized statement of the balance due, if any.

1 ~~(3)~~

2 (C) The name of the provider of the air or sea transportation,
3 and the date, time, and place of each departure, or the
4 circumstances under which the date, time, and place of departure
5 will be determined.

6 ~~(4)~~

7 (D) All terms and conditions relating to the air or sea
8 transportation or travel services being purchased by the
9 passenger, including cancellation conditions. An air carrier's or
10 an ocean carrier's standard contract of carriage is not required to
11 be disclosed prior to the seller of travel receiving any money or
12 other valuable consideration.

13 ~~There is no violation of this subdivision if both of the~~
14 ~~following occur:~~

15 ~~(A) Compliance was rendered impossible as a direct result of~~
16 ~~an unforeseen condition beyond the control of the seller of travel.~~

17 ~~(B) The seller of travel obtains from each passenger written~~
18 ~~acknowledgment that the passenger has not received disclosure~~
19 ~~of the terms and conditions required by this section.~~

20 ~~(5)~~

21 (E) A clear and conspicuous statement that upon cancellation
22 of the transportation or travel services, where the passenger is not
23 at fault and has not canceled in violation of any terms and
24 conditions previously clearly and conspicuously disclosed to and
25 agreed to by the passenger, all sums paid to the seller of travel
26 for services not provided will be promptly paid to the passenger,
27 unless the passenger otherwise advises the seller of travel in
28 writing, after cancellation.

29 ~~(6)~~

30 (F) If the seller of travel is required by this article to have a
31 trust account or bond, a clear and conspicuous disclosure stating:
32 "California law requires certain sellers of travel to have a trust
33 account or bond. This business has [a trust account] or [a bond
34 issued by (company) in the amount of (\$X)]."

35 ~~(7)~~

36 (G) If the seller of travel is a participant in the Travel
37 Consumer Restitution Fund and the passenger, or the person
38 making payment for the passenger, was located in California at
39 the time of the sale of air or sea transportation or travel services,
40 a clear and conspicuous notice of the right of the passenger, or

the right of the person making payment for the passenger, to make a claim on that fund. The notice shall include a description of the losses covered, the method for making a claim, the time limit within which the claim shall be made, and the amount which may be claimed.

~~(8)~~

(H) If the seller of travel is a participant in a Consumer Protection Deposit Plan that meets the criteria set forth in subdivision (b) of Section 17550.16, a clear and conspicuous notice of the passenger's right to make a claim on the plan. That notice shall include a description of the losses covered, the method for making a claim, the time limit within which the claim shall be made, and the amount that may be claimed.

~~(9)~~

(I) If the seller of travel is a participant in a Consumer Protection Escrow Plan that meets the criteria set forth in subdivision (c) of Section 17550.16, a clear and conspicuous notice of the passenger's right to make a claim on the plan. That notice shall include a description of the losses covered, the method for making a claim, the time limit within which the claim shall be made, and the amount that may be claimed.

~~(10)~~

(J) If the seller of travel is not a participant, a clear and conspicuous disclosure that the seller of travel is not a participant in the Travel Consumer Restitution Fund. That disclosure shall be made both orally and in writing.

~~(11)~~

(K) If the seller of travel is a participant in the Travel Consumer Restitution Fund and the passenger *or any person who made a payment on behalf of the passenger for travel services* is located ~~outside~~ *in* California, a clear and conspicuous disclosure *made both orally and in writing* that the transaction is ~~not~~ covered by the Travel Consumer Restitution Fund. ~~That disclosure shall be made both orally and in writing.~~

(2) *There is no violation of this subdivision if both of the following occur:*

(A) *Compliance was rendered impossible as a direct result of an unforeseen condition beyond the control of the seller of travel.*

1 (B) The seller of travel obtains from each passenger, written
2 acknowledgment that the passenger has not received disclosure
3 of the terms and conditions required by this section.

4 (b) If a seller of travel offers, sells, provides, or distributes a
5 travel certificate as defined in Section 17550.10 and any
6 passenger payment is nonrefundable, in whole or in part, the
7 seller of travel shall obtain the written acknowledgment of that
8 limitation from the end user prior to, or at the time of, receipt of
9 any money or other valuable consideration.

10 (c) Notwithstanding any other provision of this section, if
11 money or other valuable consideration is received from a
12 customer to whom the seller of travel has sold air or sea
13 transportation within the preceding 12 months and the
14 disclosures required by this section are substantially the same as
15 the disclosures given in connection with the prior travel, the
16 disclosures required by this section shall be made within five
17 days of receipt of that money or other valuable consideration.

18 (d) Notwithstanding any other provision of this section, if
19 money or other valuable consideration is received in payment for
20 air transportation and ~~(1) the seller of travel is an officially~~
21 ~~appointed agent in good standing of the Airlines Reporting~~
22 ~~Corporation and (2) the seller of travel forwards the amount paid,~~
23 without offsetting or reducing the amount forwarded by any
24 amounts due or claimed in connection with any other transaction,
25 to the airline providing the transportation or to the Airlines
26 Reporting Corporation, the disclosures required by this section
27 with respect to that air transportation may be made orally.

28 SEC. 3. Section 17550.14 of the Business and Professions
29 Code is amended to read:

30 17550.14. (a) The seller of travel has an obligation either to
31 provide the air or sea transportation or travel services purchased
32 by the passenger or to make a refund as provided by this section.
33 The seller of travel shall return to the passenger all moneys paid
34 for air or sea transportation or travel services not actually
35 provided to the passenger, within either of the following periods,
36 whichever is earlier:

37 (1) Thirty days from one of the following dates:

38 (A) The scheduled date of departure.

39 (B) The day the passenger requests a refund.

40 (C) The day of cancellation by the seller of travel.

(2) Three days from the day the seller of travel is first unable to provide the air or sea transportation or travel services.

As used in this section, “unable to provide” includes, but is not limited to, any day on which the passenger’s funds are not in the trust account required by Section 17550.15 and subdivision (g) of Section 17550.21 or the funds necessary to provide the passenger’s transportation or travel services have been disbursed other than as allowed by Section 17550.15 or subdivision (a) of Section 17550.16.

(b) If the seller of travel has disbursed the passenger’s funds pursuant to paragraph (1), (2), (3), or (4) of subdivision (c) of Section 17550.15 *and the disbursement is in full payment for the services or transportation purchased by the passenger*, the seller of travel may, instead of providing a refund, provide to the passenger a written statement accompanied by bank records establishing that the passenger’s funds were disbursed as required by those provisions and, if disbursed to a seller of travel, proof of current registration of that seller of travel. A seller of travel who is exempt from the requirements of Section 17550.15 pursuant to subdivision (a) of Section 17550.16 and who is in compliance with subdivision (a) of Section 17550.16 may comply with this section by maintaining and providing to the passenger documentary proof of disbursement in compliance with subdivision (a) of Section 17550.16, and proof of current registration of the seller of travel to whom the funds were disbursed, which registration shall note that the registered seller of travel either has a trust account in compliance with Section 17550.15, or is exempt from the requirements of Section 17550.15 pursuant to subdivision (b) or (c) of Section 17550.16. This subdivision does not apply to refunds subject to subdivision (c) or subdivision (d).

(c) If terms and conditions relating to a refund upon cancellation by the passenger have been disclosed and agreed to by the passenger and the passenger elects to cancel for any reason other than a seller of travel being unable to provide the air or sea transportation or travel services purchased, the making of a refund in accordance with those terms and conditions shall be deemed to constitute compliance with this section.

(d) Any material misrepresentation by the seller of travel shall be deemed to be a violation of this article and cancellation by the

1 seller of travel, necessitating a refund as required by subdivision
2 (a).

3 *SEC. 4. Section 17550.17 of the Business and Professions*
4 *Code is amended to read:*

5 17550.17. (a) This section does not apply to sellers of travel
6 who are exempt from the requirements of Section 17550.15
7 pursuant to Section 17550.16.

8 (b) Upon payment in full by the passenger for air or sea
9 transportation and any related services with a credit card or with
10 cash, the seller of travel shall issue and deliver the ticket or
11 voucher to the passenger or his or her designated agent within 72
12 hours.

13 (c) Upon payment in full by the passenger for air or sea
14 transportation and any related services with a check, the seller of
15 travel shall issue and deliver the ticket or voucher to the
16 passenger or his or her designated agent within 72 hours of the
17 earlier of the following:

18 (1) The time the passenger's payment is credited to the seller
19 of travel's account.

20 (2) The expiration of the maximum hold period specified in
21 Section 10.190405 of Title 10 of the California Code of
22 Regulations.

23 (d) Tickets, vouchers, or receipts shall be deemed to have been
24 delivered if they have been turned over to an independent
25 third-party delivery service or the United States Postal Service
26 for regular delivery.

27 (e) ~~Where~~ *If* the seller of travel is unable to issue tickets or
28 vouchers upon payment as set forth in subdivisions (b) and (c),
29 the seller of travel may comply with this section by *taking* either
30 *of the following actions:*~~(1)~~

31 *(1) Timely forwarding to the air or sea carrier; or provider of*
32 *travel services, the portion of the sum paid by the passenger that*
33 *is required by the air or sea carrier or provider of travel services*
34 *from the seller of travel in order to provide the transportation or*
35 *services purchased by that passenger; ~~the~~ and sending to the*
36 *passenger within five business days of the date of the purchase or*
37 *before the date of the passenger's departure, whichever occurs*
38 *first, a receipt describing the transportation and services that*
39 *were purchased. The seller of travel may not offset or reduce the*

1 amount forwarded by any amounts due or claimed in connection
2 with any other transaction, ~~or (2) complying.~~

3 (2) *Complying* with Sections 17550.13, 17550.14, and
4 17550.15.

5 (f) There is no violation of this section if ~~(1)~~ compliance with
6 this section was rendered impossible as a direct result of an
7 unforeseen condition beyond the control of the seller of travel,
8 and, ~~(2)~~ the seller of travel complied with this section or made
9 restitution to the passenger within 30 days after the transportation
10 or travel services purchased by the passenger were not provided.

11 (g) For purposes of this section, “72 hours” means three
12 business days as defined in Section 9 of the Civil Code.

13 **SECTION 1.—**

14 *SEC. 5.* Section 17550.195 is added to the Business and
15 Professions Code, to read:

16 17550.195. (a) The Attorney General shall immediately
17 suspend the registration of a seller of travel who has been
18 convicted of a felony offense pursuant to Section 17550.19.

19 (b) A person who has been convicted of a felony offense
20 pursuant to Section 17550.19 is prohibited, for a period of seven
21 years commencing on the date of his or her conviction, from
22 registering as a seller of travel and from participating in the
23 Travel Consumer Restitution Fund.

24 *SEC. 6. Section 17550.21 of the Business and Professions*
25 *Code is amended to read:*

26 17550.21. Each filing pursuant to Section 17550.20 shall
27 contain the following information:

28 (a) The name or names of the seller of travel, including the
29 name under which the seller of travel is doing or intends to do
30 business, if different from the name of the seller of travel.

31 (b) The seller of travel’s business form and place of
32 organization and, if operating under a fictitious business name,
33 the location where the fictitious name has been registered. If the
34 seller of travel does business in California from one or more
35 locations in this state but does not maintain its principal place of
36 business in this state, the seller of travel shall state whether it
37 meets the requirements of paragraph (16) of subdivision (e) of
38 Section 17511.1.

39 (c) The complete street address or addresses of all locations
40 from which the seller of travel will be conducting business,

1 including, but not limited to, locations at which telephone calls
2 will be received from, or made to, passengers or other sellers of
3 travel. The statement shall designate which location is the
4 principal place of business.

5 (d) The complete business and residential addresses and
6 telephone numbers, the driver's license number and state of
7 issuance or equivalent personal identification, the social security
8 number, and the date of birth of each owner and principal of the
9 seller of travel. "Owner" means a person who owns or controls
10 10 percent or more of the equity of, or otherwise has claim to 10
11 percent or more of the net income of, a seller of travel.
12 "Principal" means an owner, an officer of a corporation, a
13 general partner of a partnership, or a sole proprietor of a sole
14 proprietorship.

15 (e) A statement as to whether the seller of travel, any owner,
16 or principal, or any other seller of travel owned or managed by
17 any owner or principal of the seller of travel, or the seller of
18 travel itself has had entered against that person or entity any
19 judgment, including a stipulated judgment, order, made a plea of
20 nolo contendere, or been convicted of any criminal violation. The
21 statement shall identify the person, the court or administrative
22 agency rendering the judgment, order, or conviction, the docket
23 number of the matter, and the date of the judgment, order, or
24 conviction; where the judgment, order, or record of conviction is
25 filed; and the nature of the case or judgment. This subdivision
26 does not require disclosure of marital dissolution, child support,
27 or child custody proceedings.

28 (f) A copy of the travel certificates, if any, that are or will be
29 sold, marketed, or distributed to any person or entity by the seller
30 of travel.

31 (g) The seller of travel shall file with the Attorney General a
32 signed and dated statement ~~indicating (1) the~~ *providing the*
33 *following:*

34 (1) *The account number of each trust account required by this*
35 *article;* ~~(2) the.~~

36 (2) *The name and address of each financial institution at which*
37 *the seller of travel maintains a trust account required by this*
38 *article;* ~~(3) any.~~

(3) Any registration number issued to the seller of travel by the Airline Reporting Corporation or the International Association of Travel Agents Network, ~~and (4) a.~~

(4) A consent form consenting to the Attorney General, a district attorney, or their representatives obtaining directly from the Airlines Reporting Corporation, International Association of Travel Agents Network, a seller of transportation, provider of transportation, provider of travel services, and any financial institution where passenger funds have been deposited, any information related to an investigation of a seller of travel's compliance with this section. The consent form shall be provided by the Attorney General. If a bond is maintained in lieu of the trust account, a copy of that bond shall be filed with the Attorney General.

(h) A statement signed by each owner and principal granting permission to the office of the Attorney General to obtain from any financial institution or credit union at which any trust account required by Section 17550.15 is maintained, information relating to that trust account, as set forth in paragraph (2) of subdivision (f) of Section 17550.15.

(i) The name, address, and telephone number of each person described in subdivision (g) of Section 17550.20 with whom the seller of travel contracts.

(j) *If at the time of registration renewal, no change has occurred to the information provided in the registration statement and the permission described in subdivision (h) has not expired, the seller of travel may, instead of filing a registration statement containing the information required by subdivisions (a) to (i), inclusive, file a statement attesting to the continued accuracy of the information in the registration statement. The attestation shall be in a form specified by the Attorney General and verified as described in subdivision (k).*

(k) The information required by this section shall be verified by a declaration signed and dated by each owner and principal of the seller of travel, or in the case of a registered seller of travel that does business in California, from one or more locations in California, and that meets the requirements of paragraph (16) of subdivision (e) of Section 17511.1, by a duly authorized officer of the corporation, under penalty of perjury pursuant to the laws of the State of California. The declaration shall specify the date

1 and location of signing. Upon reregistration by a previously
2 registered seller of travel, the information required by this section
3 may be verified by the chief executive officer of a corporation,
4 managing partner of a partnership, or manager of a limited
5 liability company.

6 *SEC. 7. Section 17550.26 is added to the Business and*
7 *Professions Code, to read:*

8 *17550.26. No seller of travel shall sell a membership or other*
9 *benefit entitling the purchaser to future travel services at a*
10 *discount or reduced price or on a preferential basis, if the total*
11 *consideration for the membership or other benefit exceeds one*
12 *hundred dollars (\$100) or the duration of the membership or*
13 *other benefit exceeds one year. Nothing in this section relieves a*
14 *seller of travel from compliance with the requirements for*
15 *discount buying services pursuant to Title 2.6 (commencing with*
16 *Section 1812.100) of Part 4 of Division 3 of the Civil Code.*

17 *SEC. 8. Section 17550.37 of the Business and Professions*
18 *Code is amended to read:*

19 *17550.37. (a) “Person aggrieved,” as used in this article,*
20 *means a passenger, as defined in Section 17550.3, located in*
21 *California at the time of sale, or a person located in California at*
22 *the time of sale who made any payment on behalf of the*
23 *passenger for air or sea transportation or travel services, who has*
24 *sustained a loss as a result of the failure of a seller of travel to*
25 *refund payments made by or on behalf of a passenger as payment*
26 *for air or sea transportation or travel services, where a refund is*
27 *due as a result of the bankruptcy, insolvency, cessation of*
28 *operations, or material failure to provide the transportation or*
29 *travel services purchased by the passenger. A contract between*
30 *the seller of travel and either the passenger or the person making*
31 *payment on behalf of the passenger is sufficient to be a “person*
32 *aggrieved.” “Loss,” as used herein, shall be limited to losses that*
33 *are incurred in a transaction with a seller of travel who, at the*
34 *time of sale, was a paid-up participant in the Travel Consumer*
35 *Restitution Fund and was registered pursuant to Section*
36 *17550.20. “Person aggrieved” shall not mean or include a*
37 *passenger, or person making payment on behalf of a passenger,*
38 *in a transaction where the air or sea transportation or travel*
39 *services are furnished by a business entity that—(a) is located and*
40 *providing transportation or travel services outside of the United*

States and ~~(b)~~ is not in compliance with Article 2.6 (commencing with Section 17550).

(b) Any person aggrieved who files a claim for payment from the Travel Consumer Restitution Fund thereby waives his or her right to bring any action at law or equity that ~~(1)~~ is against the seller of travel as to whom the claim is made and ~~(2)~~ arises from the transaction that is the subject of the claim against the restitution fund. The claim form required by Section 17550.46 shall include a clear and conspicuous notice of the waiver.

(c) The waiver of rights provided for by subdivision (b) shall not apply to any claimant whose claim is denied on any of the following grounds, as set forth in the statement of decision required by subdivision (d) of Section 17550.47:

(1) The seller of travel was not, at the time of sale, a paid-up participant in the Travel Consumer Restitution Fund, as required by subdivision (a).

(2) The seller of travel was not, at the time of sale, registered pursuant to Section 17550.20.

(3) The claimant was not located in California at the time of sale, as required by subdivision (a).

SEC. 9. Section 17550.38 of the Business and Professions Code is amended to read:

17550.38. (a) It is the purpose of the Travel Consumer Restitution Corporation to provide restitution to a person aggrieved, subject to the limitations set forth in this article. The restitution is secondary *only* to any ~~other source of relief~~, compensation, or reimbursement to which a person aggrieved may be entitled. ~~Nothing herein under any of the following:~~

(1) *A Consumer Protection Deposit Plan, as described in subdivision (b) of Section 17550.16.*

(2) *A Consumer Protection Escrow Plan, as described in subdivision (c) of Section 17550.16.*

(3) *Travel insurance.*

(4) *The successful assertion by the person aggrieved of that person's rights under Section 1747.50 or 1747.90 of the Civil Code or under Section 226.12 or 226.13 of Title 12 of the Code of Federal Regulations.*

(b) *Nothing in this section shall be construed to require a person aggrieved to bring a civil action to obtain any relief, compensation, or reimbursement or to file a crime report with*

1 *law enforcement* in order to obtain payment from the restitution
2 fund.

3 ~~(b)~~

4 *(c)* The restitution shall be paid from the Travel Consumer
5 Restitution Fund established by the Travel Consumer Restitution
6 Corporation.

7 ~~(e)~~

8 *(d)* The Travel Consumer Restitution Corporation may request
9 legal counsel, representation, and advice from the office of the
10 Attorney General.

11 *SEC. 10. No reimbursement is required by this act pursuant*
12 *to Section 6 of Article XIII B of the California Constitution*
13 *because the only costs that may be incurred by a local agency or*
14 *school district will be incurred because this act creates a new*
15 *crime or infraction, eliminates a crime or infraction, or changes*
16 *the penalty for a crime or infraction, within the meaning of*
17 *Section 17556 of the Government Code, or changes the definition*
18 *of a crime within the meaning of Section 6 of Article XIII B of the*
19 *California Constitution.*